

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW MEXICO

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 vs. NO: CR-15-4268 JB

6 ANGEL DELEON, et al.,

7 Defendants.

8 VOLUME 29

9 Transcript of Jury Trial before The Honorable
10 James O. Browning, United States District Judge, Las
11 Cruces, Dona Ana County, New Mexico, commencing on
12 March 9, 2018.

13 For the Plaintiff: Ms. Maria Armijo, Mr. Randy
14 Castellano, Mr Matthew Beck

15 For the Trial 1 Defendants: Ms. Amy Jacks, Mr.
16 Richard Jewkes, Ms. Theresa Duncan, Mr. Marc Lowry,
17 Ms. Carey Bhalla, Mr. Bill Maynard, Mr. Ryan Villa,
18 Ms. Justine Fox-Young.

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1 THE COURT: All right. It looks like
2 everybody is here and ready to go. I appreciate
3 everybody making themselves available to me this
4 afternoon.

5 All right. I appreciate y'all coming over
6 and making yourselves available before we break for
7 what we think is the weekend. As we'll go through
8 the notes from the jury, you'll see that I don't
9 have a clear indication of where the jury wants to
10 go, but I think they're going to want to break for
11 the weekend.

12 So let me start with -- we were here on
13 Monday night, which was the 5th, and I think the
14 record is pretty clear on that day. So let's move
15 then to Tuesday, the 6th. And I'm going to ask Ms.
16 Standridge to give you the time that she took roll
17 and the jury began to deliberate that day.

18 THE CLERK: Tuesday, the 6th, roll was
19 taken at 9:00 a.m. and they began deliberation at
20 that time.

21 THE COURT: At 9:00 a.m.

22 THE CLERK: Yes, sir.

23 THE COURT: Okay. Then we received a note
24 from the jury at 11:10, 3/6/18. It still looks like
25 it signed by Mr. Laroche, juror number 3, who is

1 serving as the foreperson. It says, "Your Honor, we
2 will most certainly continue our deliberations
3 through lunch. Please make those arrangements.
4 Thank you. PS: We were told that our options are
5 limited to pizza. However, some jurors have
6 concerns about ingredients. Please have Joanne come
7 discuss that with us." Dated 3/6/18, time 11:10.

8 I believe Ms. Standridge emailed and
9 called all of you, and all of you agreed to that
10 procedure. Is that correct, Ms. Armijo?

11 MS. ARMIJO: Yes, Your Honor.

12 THE COURT: Is that correct on behalf of
13 the defendants?

14 MS. DUNCAN: Yes, Your Honor.

15 THE COURT: All right. So not hearing any
16 objection, this will be marked as Clerk's Exhibit
17 AC, and that's the way we dealt with that.

18 Then a little later in the day, again, on
19 3/6/18, at 12:27, again a note from Mr. Laroche,
20 from the jury. It says, "Your Honor, please provide
21 hard copies of all location histories so that we can
22 view the histories side by side."

23 Ms. Standridge emailed you and called all
24 of you, and I think all of you agreed that that
25 would be done. Those were provided to the jury. Is

1 that correct, Ms. Armijo?

2 MS. ARMIJO: Yes, Your Honor.

3 THE COURT: Is that correct from the
4 defendants' standpoint?

5 MS. DUNCAN: Yes, Your Honor.

6 THE COURT: All right. We will then mark
7 this note from the jury as Clerk's Exhibit AD.

8 Later in the day, at 5:07, again in a note
9 dated 3/6/18 at 5:07, signed by Mr. Laroche as the
10 foreperson, it says, "Your Honor, the members of the
11 jury would like to leave at 5:30 p.m. We would like
12 to reconvene at 8:30 a.m."

13 And Ms. Standridge emailed all of you. We
14 didn't feel a need to convene for that. We had
15 given instruction to the jury the night before, so
16 we didn't reconvene, and everyone agreed that I
17 would just send a note to the jury that this request
18 is granted.

19 Is that correct, Ms. Armijo?

20 MS. ARMIJO: Yes, Your Honor.

21 THE COURT: Is that also in the
22 defendants' understanding? Everybody looks like
23 they're nodding. All right.

24 So I wrote on there, "This request is
25 granted. Judge Jim Browning at 3/6/18 at 5:26 p.m."

1 And this note will be marked as Clerk's Exhibit AE.

2 All right, Ms. Standridge, if you'll give
3 the time that the jury was -- attendance was taken
4 on Wednesday, March 7, at what time they convened
5 and began deliberations.

6 THE CLERK: Wednesday, March 7, at 8:31.

7 THE COURT: All right. We received then a
8 note from the jury, again signed by Mr. Laroche, at
9 10:17 dated here in Las Cruces on 3/7/18 that says,
10 "Your Honor, can the jury be provided with time
11 stamps of recordings that were published to the jury
12 in the courtroom? Thank you."

13 And Ms. Standridge sent this, the contents
14 of this note, I think we all agreed that the answer
15 would be "No." Correct, Ms. Armijo?

16 MS. ARMIJO: That's correct, Your Honor.

17 THE COURT: Is that also the understanding
18 of the defendants?

19 MS. DUNCAN: Yes, Your Honor.

20 THE COURT: All right. So I wrote, "No,
21 Judge Jim Browning at 3/7/18 at 10:31 a.m." That
22 note was returned and that note has been marked as
23 Clerk's Exhibit AF.

24 Also that same day at 10:54 dated at Las
25 Cruces on 3/7/18, again signed by the foreperson

1 Mr. Laroche, the note from the jury said, "Your
2 Honor, the members of the jury are aware that it
3 takes time for lunch to be prepared and ordered.
4 With that in mind, can we please have Joanne come
5 talk to us so we can begin that process?"

6 Ms. Standridge sent a note to all of you
7 indicating what the jury was requesting. It was my
8 understanding all of you approved. I did not return
9 that note, but we sent Ms Standridge to arrange
10 lunch.

11 Is that your understanding, Ms. Armijo?

12 MS. ARMIJO: Yes, Your Honor.

13 THE COURT: Is that the defendants'
14 understanding as well?

15 MS. DUNCAN: Yes, Your Honor.

16 THE COURT: So I'll mark that as Clerk's
17 Exhibit AG. For your information, they wanted
18 Dion's on Tuesday. They wanted -- what was that
19 diner -- they wanted tacos on Wednesday, so Ms.
20 Standridge was concerned that they weren't choosing
21 the best taco place in Las Cruces, but nonetheless
22 they got tacos.

23 All right. Then a little bit later in the
24 day, at 5:09, dated here at Las Cruces on 3/7/18,
25 again a note from Mr. Laroche, the foreperson. He

1 says, "The jury would like to leave at 5:30 p.m. and
2 reconvene at 8:30 again. Thank you."

3 Ms. Standridge sent a note to all of you
4 and then followed up with a telephone call, and all
5 of you agreed that that request should be granted.

6 Is that correct, Ms. Armijo?

7 MS. ARMIJO: Yes, Your Honor.

8 THE COURT: Is that the defendants'
9 understanding, as well?

10 MS. DUNCAN: Yes, Your Honor.

11 THE COURT: We didn't feel to need to get
12 together with them. They had been instructed on
13 Monday night, so we simply sent a note in -- I
14 did -- that "The request is granted. Judge Jim
15 Browning at 3/7/8" -- it says 8, it should have been
16 18 -- "at 5:19 p.m. on 3/7" -- put an 8 again. I
17 need to put an 18 there. That note will be marked
18 as Clerk's Exhibit AH.

19 All right. Let's move, then, to Thursday,
20 March 8, '18.

21 Ms. Standridge, do you want to note the
22 time that the jury was -- called roll in the jury
23 room and when they began deliberations?

24 THE CLERK: Thursday, March 8, at 8:28
25 a.m.

1 THE COURT: All right. And then a little
2 later in the morning at 11:11 on 3/8/18, we received
3 a note again from Mr. Laroche as the foreperson that
4 said, "Your Honor, we would like to speak with
5 Joanne so that we can figure out lunch. Thank you."

6 And I think Ms. Standridge sent the guts
7 of this email or this note to all of you and
8 followed it with a call, and y'all agreed she should
9 go back and arrange lunch.

10 Is that correct, Ms. Armijo?

11 MS. ARMIJO: Yes, Your Honor.

12 THE COURT: Defendants in agreement?

13 MS. DUNCAN: Yes, Your Honor.

14 THE COURT: So there was no returning of
15 this note. Simply we agreed to send Ms. Standridge
16 back. So this note will be marked as Clerk's
17 Exhibit AI.

18 Later that day, the jury sent a note,
19 again signed by Mr. Laroche as the foreperson, at
20 5:00 on 3/8/18. It says, "Your Honor, the jury
21 would like to know if we are allowed to leave Las
22 Cruces if we have not finished deliberating by
23 tomorrow evening. People would like to know so that
24 they can arrange hotels, et cetera. Additionally,
25 can we leave at 5:30 p.m. today and reconvene at

1 8:30 a.m. on Friday morning?"

2 Ms. Standridge sent a note to all of you
3 indicating what the two questions were here from the
4 jury. I think everyone agreed that both questions
5 should be answered as yes.

6 Is that correct, Ms. Armijo?

7 MS. ARMIJO: Yes, Your Honor.

8 THE COURT: Is that the defendants'
9 understanding, as well?

10 MS. DUNCAN: Yes, Your Honor.

11 THE COURT: So I put, "Yes as to both
12 questions. Signed Judge Jim Browning at 5:10 p.m.
13 at 3/8/18."

14 So that note will be marked as Clerk's
15 Exhibit AJ.

16 And then, let's see. Today, Ms.
17 Standridge, when did you take roll today and when
18 did the jury begin to resume its deliberation?

19 THE CLERK: Friday, March 9, at 8:33 a.m.

20 THE COURT: All right. And then at 11:15,
21 again with a note from Mr. Laroche as the
22 foreperson, dated here in Las Cruces at 3/9/18, it
23 says, "Your Honor, could we please speak with Joanne
24 to order lunch? Thank you."

25 Ms. Standridge sent a note to all of you,

1 and then followed up with phone calls. I think
2 everyone is in agreement that the answer was yes.

3 Is that correct, Ms. Armijo?

4 MS. ARMIJO: Yes, Your Honor.

5 THE COURT: Is that the defendants'
6 understanding, as well?

7 MS. DUNCAN: Yes, Your Honor.

8 THE COURT: So I did respond to this one.
9 I put, Yes, JOB," and then I figured I'd better put
10 my name, so "Judge Jim Browning at 3/9/18 at 11:19
11 a.m., and I put "JOB, 3/9/18" and that note will
12 be --

13 MS. ARMIJO: Your Honor, may we approach
14 regarding that note?

15 THE COURT: Okay. And this note will be
16 marked as Clerk's Exhibit AK.

17 (The following proceedings were held at
18 the bench.)

19 MS. ARMIJO: Is there any way we cannot
20 read this note out in public given that it mentions
21 where the juror --

22 THE COURT: The next note?

23 MS. ARMIJO: Yes, the next note.

24 THE COURT: Is that all right with
25 everybody? No objection?

1 (The following proceedings were held in
2 open court.)

3 THE COURT: All right. So the next note
4 indicates -- one of the jurors said -- this note was
5 at 1:55, dated in Las Cruces at 3/9, signed by
6 Mr. Laroche. And one of the jurors needed to let
7 Jamie or Joey in the clerk's office know that they
8 should book her room at a particular hotel next --
9 starting Sunday week. And if he needs reminding of
10 preferences, he should come speak with her.

11 And I think Ms. Standridge contacted all
12 of you and all of you are in agreement that it would
13 be all right for the clerk's office to make that
14 contact and to arrange for that juror's hotel room.

15 Is that correct, Ms. Armijo?

16 MS. ARMIJO: Yes, Your Honor.

17 THE COURT: Is that defendants'
18 understanding, as well?

19 MS. DUNCAN: Yes, Your Honor.

20 THE COURT: All right. So I will mark
21 that as Clerk's Exhibit AL.

22 So yesterday they dined at -- what's the
23 diner?

24 THE CLERK: Metropolitan Diner.

25 THE COURT: Metropolitan Diner. So they

1 were in for salads and sandwiches. And today they
2 went with a franchise chain, Jason's Deli. So
3 that's what they have eaten over the last few days.

4 All right. Is there anything else? We
5 haven't met since Monday night. I've seen some of
6 you coming in and out, but we've done everything by
7 email and calls. I think that's been convenient for
8 everybody. I hope it has been, rather than keeping
9 you captive here.

10 But is there anything else that anybody
11 needs to put on the record since we were last here
12 on Monday night? Anything additional, Ms. Armijo,
13 for the Government?

14 MS. ARMIJO: No, Your Honor.

15 THE COURT: How about for the defendants?
16 Mr. Maynard?

17 MR. MAYNARD: Judge, I haven't talked with
18 anyone else on the defense teams about this, but if
19 the jury note deals only with lunch and being
20 excused at 5:00 or 5:30, I don't need to be asked
21 about my opinion. I'm not sure how the others feel.
22 I just would like to be informed about the Court's
23 response.

24 THE COURT: All right. Is everybody
25 comfortable with the way we've been responding and

1 all we need to do is let you know about it? Does
2 that work for everybody?

3 MS. ARMIJO: Yes, Your Honor.

4 THE COURT: How about for the defendants?

5 MR. VILLA: Yes, Your Honor. I don't
6 think our input matters. I think just letting us
7 know is fine.

8 THE COURT: Well, I just want to keep you
9 involved and let you know. I mean, I know that
10 y'all are eager to hear anything.

11 Anything else from the defendants?
12 Anything else we need to put on the record?

13 MR. LOWRY: Your Honor -- go ahead.

14 MS. JACKS: I'll defer to Marc.

15 THE COURT: Mr. Lowry, I'll let you go
16 first.

17 MR. LOWRY: Your Honor, I just want to get
18 a little housekeeping taken care of for next week.

19 THE COURT: Okay.

20 MR. LOWRY: I've had -- as deliberations
21 happened this week -- courts in Albuquerque set
22 hearings for Monday and Wednesday, and we wanted to
23 know if it's okay, as long as we have at least one
24 attorney on a defense team covering, if we can trade
25 off to make sure we're here, somebody is here in Las

1 Cruces.

2 THE COURT: That's fine. Yeah, I think if
3 you just have one attorney, that's fine.

4 MR. LOWRY: Thank you, Your Honor.

5 THE COURT: Ms. Jacks, what did you have?

6 MS. JACKS: I actually have two things.
7 One is: We still have our motion to dismiss for the
8 Government's Brady violation pending before this
9 Court, and I wanted to supplement the record at this
10 time and submit each of the 302s regarding Lupe
11 Urquizo.

12 THE COURT: All right.

13 MS. JACKS: I have a folder with those in
14 it. I'll read you the dates. Do you want me to
15 just read the dates and the Bates page numbers?

16 MS. ARMIJO: That's fine.

17 MS. JACKS: And I'll just hand it up to
18 the Court.

19 THE COURT: All right.

20 MS. JACKS: But that is February 24, 2017,
21 starting at Bates 43636 through 43637. March 6 of
22 2017 starting at Bates 43638 through 43644. A 302
23 dated August 22, 2017, 43650 through 43653. January
24 22, 2018, at Bates 51485, and another one dated the
25 same, January, 26, 2018, Bates 51486.

1 And if I've missed something, that is
2 unintentional. So if I am missing something, I'm
3 happy to have the Government bring that to my
4 attention and get copies for the Court.

5 THE COURT: All right. Any response from
6 the Government? Is it all right -- any objection to
7 me taking these documents?

8 MS. ARMIJO: No, Your Honor, and I
9 obviously didn't know we were going to be dealing
10 with this, so I didn't bring anything with me. But
11 if we see something, we'll let them know.

12 THE COURT: All right. This is what I am
13 working on. So if somebody thinks that something
14 else is more urgent, let me know. But this is the
15 motion I'm working on. And I may expand my opinion
16 to cover all three of the motions, I think Ms.
17 Bhalla's, and somebody else had one. Was it yours,
18 Ms. Fox-Young? So I think there were three that
19 kind of came in all at one time, and the Government
20 responded to all three at the same time. So I have
21 taken yours up first, Ms. Jacks, so that's what I'm
22 working on now. But I may expand it to cover all
23 three of those motions. So if anybody is sitting
24 there thinking it would be better for the Court to
25 work on something else, let me know. Otherwise,

1 that's what I'm working on at the present time.

2 MS. JACKS: I don't think we finished the
3 motion or the hearing. I would request the
4 opportunity to call FBI Agent Nancy Stemo, because
5 now I'm understanding the notes were not hers, but
6 she's the person that wrote the 302 at issue, or at
7 least partially at issue. And I have never heard
8 back from the Government with respect to our Touhy
9 request regarding Mr. Beck and Mr. Castellano.

10 THE COURT: Would you do this for me?
11 Would you just talk to Ms. Wild about where to fit
12 it in?

13 MS. JACKS: Sure.

14 THE COURT: If you'll work with her,
15 because she's obviously working hard with the trial
16 2 people right at the moment, lining them up next
17 week, and if we need to try to get in, just work
18 with her to set a hearing on that.

19 MS. JACKS: Of course. And I'll work with
20 the Government on when Ms. Stemo might be available,
21 as well.

22 The other question I have is: If the jury
23 does return a verdict as to any or all defendants,
24 are the defendants then excused from the pretrial
25 hearings?

1 THE COURT: If they return a clean
2 verdict. If they give us either a guilty verdict or
3 an acquittal, that's clean. If they're hung, then
4 that person or persons will have to stay around
5 until I can kind of get my feet on the ground as to
6 what we're doing next. So if you're still in the
7 case, you'll need to be here. If you get a clean
8 verdict, either guilty or acquittal, then you're
9 excused, and we'll treat you just like you pled or
10 you're just out of the case. Does that make sense?

11 MS. JACKS: Yes.

12 THE COURT: And then I'll just try to get
13 my feet on the ground as to where we go from there.

14 Mr. Jewkes?

15 MR. JEWKES: 8:30 or 9:00 a.m. Monday?

16 THE COURT: You know, I think it's 9:00.
17 Right? I got some -- I think we're bringing in all
18 the defendants in this case and all of the
19 defendants in group 2 at the same time, and I think
20 as a concession with the marshals, it's 9:00.

21 MR. VILLA: And Your Honor, assuming the
22 jury is still deliberating at that point, are we
23 going to be sitting here in attendance at the motion
24 hearing?

25 THE COURT: Yeah. I mean, it's still one

1 case. I made them sit through yours. I've got to
2 make you sit through theirs. But I assume that
3 we're probably looking at that coming to an end at
4 some point. Ms. Jacks.

5 MS. JACKS: Now I forgot my question.

6 THE COURT: It was a good one though,
7 wasn't it?

8 MS. BHALLA: Your Honor, if I may, in
9 regards to the motions to dismiss and motion for
10 mistrial, we may want to be able to supplement the
11 record with Agent Acee's testimony, given some of
12 the notes that we got later on in the game as well.
13 At least it's my understanding they're Agent Acee's
14 notes. So perhaps it might be prudent, depending on
15 what happens, that when we do schedule the motion
16 hearings, we schedule them together, Your Honor.

17 THE COURT: All right. Like I said,
18 that's what I'm working on now. So if y'all want me
19 to stop working on that and do something else or if
20 you want to go work on something else, let me know.
21 But that is what I plunged into after the trial.
22 It's always a little bit of a guess as to what to go
23 to next.

24 MS. JACKS: Right. I remember my
25 question, or just my comment. And I think I know

1 the answer to this, but after speaking with Mr.
2 Sanchez, if the jury -- how can I say this? If the
3 jury is hung or if he's required to attend these
4 motion hearings, he would like to waive his
5 presence. He's exhausted from the trial, in terms
6 of just getting up so early and getting back so
7 late. So I think I know what the Court's position
8 is, but I want to make clear what ours is, as well.

9 THE COURT: Well, let me get my feet on
10 the ground when we get whatever we're going to get
11 from the jury. We're going to have to all absorb
12 it. So let me absorb it before I make any ruling on
13 that. I think for a while, at least, I'm going to
14 have to have the defendants here until we're able to
15 absorb whatever the jury has done.

16 All right. So I won't grant that at the
17 moment, but we'll take it a step at a time.

18 Do the defendants have anything else they
19 want to raise, put on the record?

20 MR. VILLA: Did you just get a note from
21 the jury?

22 THE COURT: I did, but I'm trying to see
23 if anybody needs to put anything on the record
24 before we take out the note. All right.

25 While we've been talking, we received a

1 note from the jury. It's dated here at 4:32 p.m. on
2 3/9/18. We've got the signature of again Mr.
3 Laroche as the foreperson. It says, "Your Honor, on
4 the Count 6 for Rudy Perez, we the jury have not
5 come to a unanimous decision. All other counts have
6 unanimous agreements on verdicts."

7 What's your thoughts on how to respond,
8 Ms. Armijo?

9 MS. ARMIJO: May we consult?

10 THE COURT: You may.

11 MS. ARMIJO: I think the defense may want
12 to consult.

13 THE COURT: Does the defense want to group
14 together and think about it, too?

15 MS. JACKS: I think that's Mr. Perez'
16 business.

17 THE COURT: I'm going to have Ms.
18 Standridge mark this as Clerk's Exhibit AM, as in
19 Mary.

20 MR. JEWKES: Your Honor, may I approach
21 the courtroom deputy with a signed waiver? Ms.
22 Standridge.

23 THE COURT: You may.

24 MR. VILLA: Your Honor, I think that
25 perhaps what we need to do is ask the jury -- I'm

1 not requesting any sort of Allen instruction, but
2 just ask them whether any further deliberations
3 would be of use with respect to Count 6. That way,
4 we can determine whether, you know, we need to make
5 a motion or not.

6 THE COURT: All right. What's the
7 Government's thoughts?

8 MS. ARMIJO: Yes, Your Honor, that's fine.
9 Otherwise, United States would say we'd be ready to
10 take the verdicts.

11 THE COURT: Okay. So what you're
12 proposing is that we simply ask -- the Court simply
13 ask the jury if further deliberation on Count 6
14 would be beneficial?

15 MS. ARMIJO: Yes, Your Honor.

16 THE COURT: And nobody at this point is
17 requesting an Allen charge at this time?

18 MS. ARMIJO: No.

19 THE COURT: All right. So is there any
20 objection to so proceeding with this? I think what
21 I would -- if there is no objection from any of the
22 other defendants, here's what I would propose to do,
23 is bring the jury in, give them that question, and
24 then I ask them to retire to the jury room and
25 answer it with a written note, rather than them

1 trying to do it in here. Is everyone in agreement
2 on that?

3 MS. ARMIJO: Yes, Your Honor.

4 THE COURT: Is that your agreement, as
5 well?

6 MR. VILLA: Could I just ask, Your Honor,
7 why you prefer that as opposed to asking them to
8 respond in court?

9 THE COURT: Because otherwise, they'll
10 have to deliberate in front of us.

11 MR. VILLA: I see.

12 THE COURT: I'm not sure -- I think it
13 would be better for them to just go back and give me
14 a note and say yes or no.

15 MR. VILLA: If that's the case, should we
16 not send them a note asking whether --

17 THE COURT: I can do that. Would that
18 work for the Government?

19 MS. ARMIJO: That's fine.

20 THE COURT: Let me propose -- let me draft
21 out a note and see if it meets with your approval.

22 What if I sent this note back? "Would
23 further deliberations on Count 6 be beneficial?"

24 Is that agreeable to the Government?

25 MS. ARMIJO: Yes, Your Honor.

1 THE COURT: Does that work for Mr. Perez?

2 MR. VILLA: Yes, Your Honor.

3 THE COURT: Anybody have -- any other
4 defendant have any objection?

5 MS. DUNCAN: No.

6 THE COURT: All right. Let me write this
7 down.

8 All right. Let me hand this to Ms.
9 Standridge and ask her to show it to you and, A,
10 first make sure that you can read the note with my
11 handwriting; and then, B, if you approve the note,
12 then I will send it back to the jury.

13 I'm going to have Ms. Standridge file this
14 document; correct, Mr. Jewkes?

15 MR. JEWKES: Yes, Your Honor.

16 THE COURT: So I'll give you that document
17 to be filed. Is everybody comfortable?

18 THE CLERK: They're still talking.

19 THE COURT: Mr. Villa, are you all talking
20 about this note?

21 MR. VILLA: It can go back.

22 THE COURT: Everybody in agreement on this
23 note?

24 MS. JACKS: Yes.

25 MS. ARMIJO: Yes.

1 THE COURT: Not hearing any objections,
2 Ms. Standridge will take it back, then.

3 All right. It might make sense for us to
4 recess a little bit. It doesn't mean everybody has
5 to scatter, but we'll just go off the record. Is
6 there anything we need to discuss at the present
7 time, Ms. Armijo?

8 MS. ARMIJO: No, Your Honor. Thank you.

9 THE COURT: How about from the defendants?
10 Anybody need to discuss anything?

11 MS. DUNCAN: No, Your Honor.

12 MR. VILLA: No, Your Honor.

13 THE COURT: All right. So we'll be in
14 recess and we'll go off the record.

15 (The Court stood in recess.)

16 THE COURT: All right. Let's go back on
17 the record. We received a note from the jury dated
18 here at Las Cruces on 3/9/18, time 5:00, again
19 signed by the foreperson, Mr. Laroche. It says,
20 "Your Honor, yes, further deliberation may help us
21 resolve our disagreements. We request to leave now
22 and return at 8:30 on Monday."

23 Is that what the Government would like to
24 occur?

25 MS. ARMIJO: Yes, Your Honor.

1 THE COURT: How about from the defendants?

2 MS. JACKS: Can we have a moment?

3 (A discussion was held off the record.)

4 THE COURT: Can I say a few things that
5 might be helpful to the discussion?

6 MR. VILLA: Yes, Your Honor.

7 THE COURT: Then I'll let y'all regroup.
8 There is a Tenth Circuit pattern jury instruction
9 that might be helpful at this point. It is a
10 partial verdict instruction, and it says this, and
11 I'll get you a copy if you're not able to find it.
12 This is 1.43 on page 69 of the bound volume, and
13 I'll run off a copy from the website here in a
14 moment. This instruction says, "Members of the
15 jury, you do not have to reach" -- there is a 1, 2
16 and 3, so this is 1. "You do not have to reach a
17 unanimous agreement on all the charges or all the
18 defendants" -- those are in brackets, so you can
19 tailor it -- "before returning a verdict on some of
20 the charges. If you have reached a unanimous
21 agreement," these are in brackets, "on some of the
22 charges as to one of the defendants," those are in
23 brackets, "you may return a verdict on those charges
24 or that defendant and then continue deliberating on
25 the others. You do not have to do this. But you

1 can if you wish.

2 "Two, if you do choose to return a partial
3 verdict, that verdict will be final," and then in
4 bold letters it says, "You will not be able to
5 change your minds about it later on.

6 "Three. Your other position is to wait
7 until the end of your deliberations and return all
8 your verdicts then. The choice is entirely yours."

9 The comment says the Tenth Circuit upheld
10 use of a partial verdict instruction in the United
11 States v. Patterson and held it was error to require
12 the jury to return partial verdicts in United States
13 v. LaVallee. The present instruction was patterned
14 on that given by the district court in United States
15 v. Walters. In trials in -- the use note says, "In
16 trials of multiple defendants, Federal Rule of
17 Criminal Procedure 31(B) permits a jury to return a
18 verdict at any time during its deliberations as to
19 any defendant. That's from LaVallee.

20 That rule also provides that if the jury
21 cannot agree as to all counts as to any defendant,
22 the jury may return a verdict on those counts on
23 which they agree. This instruction should only be
24 given when appropriate, e.g. should the jury ask if
25 it may return a partial verdict. It would be error

1 for the trial court to order a jury to return a
2 partial verdict or to refuse to accept a partial
3 verdict if the jury indicates it wishes to return
4 such a verdict," again citing LaVallee and citing
5 DeLapi from the Second Circuit. "We think that
6 juries should be neither encouraged or discouraged
7 to return a partial verdict, but should understand
8 their options, especially when they have reached a
9 state in their deliberations at which they may wish
10 to report a partial verdict as to some counts or
11 some defendants."

12 Now, it would seem to me that we're not in
13 a state where we really can make this decision.
14 This is a decision that I need to bring them in,
15 give them that instruction, send them back, and tell
16 them that they need to indicate to us what we want
17 to do. So before you kill too many brain cells, my
18 reading this instruction and the comments and the
19 use notes would suggest that if we -- unless we want
20 to just leave it where it is, we need to give them
21 the option, and then they need to tell us how to
22 proceed. Does the Government agree with that?

23 MS. ARMIJO: We agree, Your Honor. And we
24 would not be opposed to the Court giving them their
25 options.

1 THE COURT: How about from the defendants?

2 MS. JACKS: On behalf of Mr. Sanchez, we
3 would agree.

4 THE COURT: Is everyone else where Mr.
5 Sanchez is? Ms. Jacks?

6 MS. DUNCAN: We are, Your Honor.

7 MS. BHALLA: Upon behalf of Defendant
8 Herrera, yes, Your Honor.

9 MR. VILLA: That's fine. I just want to
10 point out, I don't know how this interplays with
11 instruction number 30 that we've given them already
12 which sort of talks about even if you can't agree
13 upon a verdict as to any single defendant on any
14 particular charge, you must return the verdict or
15 verdicts upon which you agree. I think that
16 instruction you read supplements that, but they do
17 have some direction.

18 THE COURT: Well, if you don't have any
19 disagreement, if Mr. Perez doesn't have any
20 disagreement, why don't I mark this up, I'll pass it
21 out to you, I'll bring them in and give them the
22 instruction, and then send them back and see what
23 they want to do.

24 MR. VILLA: That's fine with Mr. Perez.

25 THE COURT: All right. Let me ask y'all,

1 on this form, "you do not have to reach a unanimous
2 agreement." Do you want to have "on all the charges
3 or all the defendants," just put both of those in
4 there?

5 MS. ARMIJO: Yes, Your Honor.

6 THE COURT: Does that work for the
7 defendants? Put both of those in there.

8 MR. VILLA: Yes, Your Honor.

9 MS. JACKS: Sure.

10 THE COURT: What Ms. Standridge is passing
11 out is just a copy of what's out of the -- is this
12 off the website or out of the book? You've got the
13 web version, so I'm going to mark this up and I'll
14 pass out in just a few moments a copy of the
15 proposed jury instruction.

16 All right. We're going to be off the
17 record while I get you some copies.

18 (A discussion was held off the record.)

19 THE COURT: While y'all are looking at
20 this, I'm going to make a record.

21 Ms. Jacks, the material that you provided
22 to the Court, I've made a copy and attached it to
23 the clerk's minutes as Exhibit AN. And then I've
24 taken a working copy that I'll work with this
25 weekend.

1 I'm also going to mark this, just
2 handwrite across the top, that this is draft 1, and
3 then I'm going to ask Ms. Standridge to file this as
4 draft 1.

5 So I'll give you that, Ms. Standridge.
6 What you're looking at will be draft 1, so if there
7 are no changes.

8 Thoughts, Ms. Armijo, Mr. Castellano?

9 MS. ARMIJO: No, objection, Your Honor.

10 THE COURT: How do the defendants feel
11 about it? Any changes? Anything else you want with
12 it?

13 MS. JACKS: I'm sorry, I didn't hear.

14 THE COURT: Any changes you want with it?

15 MS. JACKS: No, Your Honor.

16 THE COURT: Does it look okay?

17 MS. DUNCAN: Looks okay to us, Your Honor.

18 THE COURT: Ms. Bhalla.

19 MS. BHALLA: Yes, Your Honor.

20 THE COURT: How about you, Mr. Villa?

21 MR. VILLA: I think it's okay, Your Honor.

22 THE COURT: Let's then bring the jury in
23 and we'll mark another one as final. Why don't I
24 just take yours before we go, and we'll just put
25 "draft/final" on yours, Ms. Standridge. So I'll

1 just put handwriting here, I'll put "draft 1 and
2 final."

3 All right. We'll bring the jury in. So
4 we'll bring the alternates in and place them in the
5 front row here behind. Everybody agree, I think,
6 that they need to hear all the instructions that are
7 given throughout. Anybody see a problem with that?

8 MS. DUNCAN: No, Your Honor.

9 MS. ARMIJO: No, Your Honor.

10 THE COURT: Mr. Villa, are you comfortable
11 with that? Ms. Fox-Young.

12 MR. VILLA: I'm just talking out loud,
13 Your Honor, but if we lost a juror and they had to
14 start over --

15 THE COURT: You don't want them to know
16 this?

17 MR. VILLA: We may not necessarily be
18 giving this instruction. I'll be interested to hear
19 what others think.

20 THE COURT: I guess my concern is have
21 you're going to have a jury back there, 11 of them
22 that have heard it, and then one that hasn't.

23 MR. VILLA: I guess I don't see a lot of
24 harm in them hearing it, so I think it's fine.

25 THE COURT: Everyone in agreement? Not

1 hearing any objection, we'll bring the alternates,
2 have them sit over here so they don't see anything
3 on this side of the room. Have them sit immediately
4 behind the Government.

5 (The alternate jurors entered the
6 courtroom.)

7 THE COURT: All right. If the alternate
8 jurors would come in and sit inside the well right
9 behind the Government. We're all standing for you,
10 and then we're going to wait and bring in the
11 jurors.

12 (.(The jury entered the courtroom.)

13 THE COURT: Well, good afternoon,
14 everyone. I haven't seen y'all since Monday night,
15 but we know from the notes we received that you've
16 been working very hard. And I think I speak on
17 behalf of all the parties and the counsel that we
18 very much -- certainly the Court, I appreciate the
19 way you've gone about your task.

20 Again, you've been a wonderful group to
21 work with, and we appreciate it very much.

22 All right. I'm going to give you a
23 supplemental jury instruction at this time. Ms.
24 Standridge is going to put it on the Elmo and I'm
25 also going to read it to you, and then I'm going to

1 ask you to go back and tell me how you'd like to
2 proceed.

3 Members of the jury, one, you do not have
4 to reach a unanimous agreement on all the charges or
5 all defendants before returning a verdict on some of
6 the charges. If you have reached a unanimous
7 agreement on some of the charges as to one or more
8 of the defendants, you may return a verdict on those
9 charges or a defendant or defendants and then
10 continue deliberating on the others. You do not
11 have to do this, but you can if you wish.

12 Two. If you do choose to return a partial
13 verdict, that verdict will be final. You will not
14 be able to change your minds about it later on.

15 And three, your other option is to wait
16 until the end of your deliberations and return all
17 your verdicts then. The choice is entirely yours.

18 All right. So I'm going to ask you to
19 return to the jury room and let me know how you wish
20 to proceed on this, or on the weekend, or however
21 you want to respond. You don't have to respond to
22 this instruction. You can just tell us how you want
23 to proceed. All right?

24 All rise. And I'll give you a copy of
25 this instruction, if you'll give me just a moment.

1 I'll make copies of this and get it back to you.

2 (. (The jury left the courtroom.)

3 THE COURT: All right. To the alternates,
4 I appreciate what you're doing for us. I know this
5 has got to be a grind for you. I understand y'all
6 got to watch "Rambo" this afternoon, so I hope that
7 was some fun, and I'm glad you've been able to work
8 with your phones and things. So I hope it's been
9 tolerable, but we all appreciate it very much.

10 So I'll ask the court security officer to
11 take you back to the jury assembly room, and as soon
12 as we know something, we'll get back with you. But
13 thanks again for what you're doing for us.

14 (The alternate jurors left the courtroom.)

15 THE COURT: All right. Everyone be
16 seated.

17 All right. Is there anything else we need
18 to discuss before we go into recess? Anything else
19 I can do for you, Ms. Armijo?

20 MS. ARMIJO: No, Your Honor, thank you.

21 THE COURT: How about from the defendants?

22 MS. DUNCAN: No, Your Honor.

23 MR. VILLA: No, Your Honor.

24 THE COURT: Why don't we go in recess and
25 off the record, and we'll just wait and see if they

1 give us another note here shortly.

2 (The Court stood in recess.)

3 THE COURT: All right. We'll go back on
4 the record. Let me first deal with the note that we
5 received immediately before where it says, "Yes,
6 further deliberations may help us resolve our
7 disagreements."

8 I'll have Ms. Standridge mark this as
9 Clerk's Exhibit AO and it will be attached to her
10 clerk's minutes.

11 All right. We've just received a note for
12 the jury. "Your Honor, the jury will not return a
13 partial verdict. We ask to resume deliberations on
14 Monday at 8:30 a.m.," dated Las Cruces on 3/9/18,
15 time 5:37 and this is signed by Mr. Laroche as the
16 foreperson. So I'll ask Ms. Standridge to mark that
17 as Exhibit AP to her clerk's minutes. I propose
18 that we bring the jury in, as well as the
19 alternates, and excuse them for the weekend. Is
20 that acceptable to the Government?

21 MS. ARMIJO: Yes, Your Honor. Thank you.

22 THE COURT: Does that work for all the
23 defendants?

24 (Defendants responded affirmatively.)

25 THE COURT: All right. So if I could

1 get -- if there is a court security officer or
2 somebody that could go get the alternates and bring
3 them back into the courtroom. So somebody from the
4 clerk's staff has gone down to get them. If you'll
5 line up the jury, we'll bring them in.

6 Is there anything else before we bring the
7 jury in?

8 MS. ARMIJO: No, Your Honor.

9 THE COURT: From the defendants?

10 (The alternate jurors entered the
11 courtroom.)

12 THE COURT: If you'll just resume your
13 place behind the Government, and we'll bring the
14 rest of the jury in.

15 (The jury entered the courtroom.)

16 THE COURT: All right, Mr. Laroche, it
17 looks like you've been speaking as foreperson; is
18 that correct?

19 MR. LAROCHE: Yes, sir.

20 THE COURT: And I understand that the jury
21 would like to resume deliberations on Monday at 8:30
22 a.m.; is that correct? All right. So we will do
23 that.

24 Let me remind you, since this is the first
25 weekend break in the jury's deliberation, of a few

1 things that are especially important. Until the
2 trial is completed -- and as you know better than
3 anybody, it's not -- you're not to discuss this case
4 with anyone, whether it's members of your family,
5 people involved in the trial, or anyone else. And
6 that includes your fellow jurors, because you meet
7 as a group, and I guess I can imagine a situation
8 now you could meet as a group without being here at
9 the courthouse. But let's not do that. Let's meet
10 at the courthouse in the room, after Ms. Standridge
11 takes roll.

12 So don't try to communicate with each
13 other, in whole or in part, over the weekend. Go do
14 something else, think about something else. But
15 don't communicate, whatever you do, with each other.
16 Just remember that you deliberate as a body, and
17 wait until Ms. Standridge takes roll on Monday
18 morning and only then begin your deliberations.

19 If anyone approaches and tries to discuss
20 the trial with you, please let me know about it
21 immediately.

22 Also, you must not read or listen to any
23 news reports of the trial. Again, don't get on the
24 internet and do any research for purposes of this
25 case.

1 And finally, remember that you must not
2 talk about anything with any person who is involved
3 in the trial, even if it doesn't have anything to do
4 with the trial.

5 If you need to speak with me, simply give
6 a note to one of the court security officers or Ms.
7 Standridge.

8 Depending how things go, you may or may
9 not hear them again. But if we do take breaks,
10 however we're doing it at night or otherwise, do
11 keep them in mind each time we take a break.

12 Thank you for all the hard work. Thank
13 you for the way you've gone about your task. We'll
14 see you at 8:30. Be safe. I know a bunch of you
15 have to go home and get medicine and clothes, and
16 things like that. So I know a lot of you are
17 leaving Las Cruces. Be safe, and thank you again
18 for your hard work. And we'll see you at 8:30 on
19 Monday morning.

20 All rise.

21 And the alternates can go out the back
22 door as well. Thank you for your hard work. You be
23 safe, too, and we'll see you at 8:30 on Monday
24 morning.

25

1 (The jury and alternate jurors left the
2 courtroom.)

3 THE COURT: All right. Anything we need
4 to discuss before we take our break for the weekend,
5 Ms. Armijo?

6 MS. ARMIJO: No, Your Honor. Just for the
7 hearings, we will be in this courtroom; correct?

8 THE COURT: Yes.

9 MS. ARMIJO: Will the Government be on
10 this side?

11 THE COURT: No, you're going to be at Mr.
12 Perez' table, and if you need more, up here. So be
13 prepared to kind of move over here and then I'll
14 kind of put defendants around and at that table. So
15 I need that table on Monday. Anything else?

16 MS. ARMIJO: No, Your Honor.

17 THE COURT: How about from the defendants?
18 Anything else?

19 All right. I appreciate your hard work.
20 Y'all have a good weekend. See you at 9:00 on
21 Monday morning. We'll bring the jury in at 8:30.
22 They can do their thing back there, but I don't need
23 to see y'all till 9:00.

24 Thank you for your hard work. Y'all have
25 a good weekend.

1 I'm going to mark this note from the jury
2 as Clerk's Exhibit AP.

3 (The Court stood in recess.)
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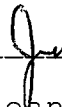
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2 STATE OF NEW MEXICO

3
4 C-E-R-T-I-F-I-C-A-T-E

5 I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,
6 Official Court Reporter for the State of New Mexico,
7 do hereby certify that the foregoing pages
8 constitute a true transcript of proceedings had
9 before the said Court, held in the District of New
10 Mexico, in the matter therein stated.

11 In testimony whereof, I have hereunto set my
12 hand on this 4th day of February, 2019.

13
14 
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